IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11543 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KULDIPSINH LALUBHA JADEJA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 11543 of 2001

HL PATEL ADVOCATES for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 27th August, 2001 passed by the District Magistrate, Kachchh at Bhuj in exercise of power under Section 3 of the PASA Act. The petitioner seeks to

challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered two registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of four anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order.

3. Learned Advocate Mr. Patel appearing for the petitioner submitted that the detaining authority has exercised powers under Section 9(2) of the PASA Act in absence of verification by the detaining authority itself. This has affected the decision making process in the mind of the detaining authority. The satisfaction recorded by the detaining authority in the grounds of detention is therefore either without any basis or on extraneous material as there is no communication between Deputy Superintendent of Police, Anjar and the detaining authority after verification. The entire decision making process of the authority has therefore affected. The right of the detenu is also therefore affected. The detention as well as the continued detention of the detenu stands vitiated and therefore the petition may be allowed.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the contentions raised before this Court, factually there is no dispute that the statements of anonymous witnesses were verified by the Dy.S.P, Anjar, Kutch. Verification is not done by the detaining authority itself. The detaining authority has however recorded the subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. What is the basis for recording the satisfaction regarding the need for exercise of power is not indicated. There is no contemporaneous material to indicate any authorisation by the detaining authority for verification of the statement by Dy. S.P and any report from Dy. S.P to the detaining authority recording the need for exercise of power. Despite this, the detaining authority has exercised the powers under Section 9(2) of the PASA Act. The entire decision making process would therefore be affected. The continued detention of the detenu would also be affected in light of the decision of this Court in S.V. Sindhi

Vs. Commissioner of Police, Baroda City, reported in 2000 (1) GLH 443. The petition therefore deserves to be allowed and the same is allowed.

6. The petition is therefore, allowed. Order of detention dated 27th August, 2001 passed by the District Magistrate, Kachchh, Bhuj is quashed and set aside. Detenu Kuldipsinh Lalubha Jadeja be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas